

IN THE SUPREME COURT OF NEW ZEALAND

[2013] NZSC 105

BETWEEN RICHARD HUGH CLEVELAND GUY  
Applicant

AND BANK OF NEW ZEALAND  
Respondent

Counsel: Applicant in person

Judgment: 25 October 2013

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**JUDGMENT OF ARNOLD J**

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**The application for review of the Registrar's decision declining to waive the payment of the filing fee is dismissed.**

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**REASONS**

**Introduction**

[1] This is an application for review of the Registrar's decision refusing to waive payment of the filing fee of \$1,100 payable on an application for leave to appeal to this Court. The application is made under s 40 of the Supreme Court Act 2003 and must be conducted by way of rehearing. I have determined that the application should be dealt with on the papers.

**Background**

[2] The applicant, Mr Guy, who although in his early 50s describes himself as a retired beneficiary, was adjudicated bankrupt on the application of the Bank of New Zealand under s 13 of the Insolvency Act 2006.<sup>1</sup> Apparently the Bank had obtained judgment against him in the District Court in the amount of \$32,475.06 in February

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<sup>1</sup> *Guy v Bank of New Zealand* [2013] NZHC 836 [Guy (HC)].

2012. When a bankruptcy notice was served on him, Mr Guy applied to have it set aside. He was unsuccessful in that application, and a costs order was made against him in favour of the Bank in the amount of \$7,780.70, bringing his total indebtedness to a little over \$40,000.

[3] The Bank applied for an adjudication order on 5 March 2013. Mr Guy filed a notice of opposition on 16 April 2013. He put forward two grounds of opposition:

- (a) First, he claimed that he had settled the debt in full. The basis of this claim was that he had sent the Bank, by courier, what he described as a bill of exchange, which provided for the payment of \$40,852.06 in 2062. One of the Bank's employees had signed the courier's slip acknowledging receipt of the package. Mr Guy said that this was sufficient to signify the Bank's acceptance of the settlement offer.
- (b) Second, he claimed that he had a reasonably arguable set-off arising from over-charging by the Bank.

[4] Associate Judge Doogue rejected both contentions. In relation to the first, he did not accept that the act of the Bank's employee in signing for the courier parcel could be construed as an acceptance by the Bank of Mr Guy's proposal for payment.<sup>2</sup> There was no other indication that the Bank had accepted the proposal. In relation to the second, the Associate Judge noted that the judgment which the Bank had obtained against Mr Guy reflected a compromise of proceedings in which both Mr Guy and his wife had raised claims of overcharging by the Bank.<sup>3</sup> As a consequence, Mr Guy and his wife had lost the ability to claim in relation to any alleged overcharging. Accordingly, the Associate Judge made the order for adjudication.

[5] Mr Guy then filed an appeal in the Court of Appeal against Associate Judge Doogue's decision. The basis for the appeal was apparently that the Bank's claim had been settled by the acceptance of the so-called bill of exchange. In conjunction

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<sup>2</sup> At [6].

<sup>3</sup> At [7].

with filing the appeal, Mr Guy applied for a waiver of the requirement to pay a filing fee, which the Registrar of the Court of Appeal declined. Mr Guy then applied for a review of the Registrar's decision by a Judge. Stevens J dismissed that application in a detailed judgment.<sup>4</sup> The Judge was not satisfied that Mr Guy would face undue financial hardship if he was required to pay the filing fee, nor did he consider that there was any issue of genuine public interest raised by the appeal.

[6] Mr Guy then applied for a review of the decision of Stevens J by three Judges of the Court of Appeal, under s 61A(2) of the Judicature Act 1908. The Court of Appeal Registry refused to accept that application, on the ground that the Court had no jurisdiction to deal with it. The Registry advised Mr Guy that his recourse was to the Supreme Court.

[7] Following that, Mr Guy attempted to pay the filing fee by way of a bill of exchange dated 25 June 2013, drawn on the Cleveland Trust. The Registrar refused to accept the bill of exchange as payment. Mr Guy attempted to file an application to review that decision in the Court of Appeal. Stevens J issued a minute saying that the Registrar's decision was an administrative one which a Judge of the Court had no power to review under r 7(2) of the Court of Appeal (Civil) Rules 2005 or s 100B of the Judicature Act.

[8] Mr Guy has now applied to this Court for leave to appeal against both the judgment and the minute of Stevens J. In conjunction with that application, Mr Guy sought a waiver of the filing fee in this Court. By letter dated 9 September 2013, the Registrar declined his application.

### **Evaluation**

[9] The principal basis of Mr Guy's application is that he is unable to pay the fee, being an undischarged bankrupt and, if required to pay it, would suffer undue financial hardship. He says that he has three dependants and that his only sources of income are Working for Families tax credits and occasional support from his family. He identifies his after-tax weekly income as being \$500, against total weekly

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<sup>4</sup> *Guy v Bank of New Zealand* [2013] NZCA 238 [Guy (CA)].

expenses of \$1,100 and says that the shortfall is met by his wife and her family. Mr Guy says he has no assets over \$5,000. Mr Guy also says that the proposed appeal raises issues of genuine public interest.

[10] Regulation 5 of the Supreme Court Fees Regulations 2003 provides:

**Power to waive fees**

- (1) A person (the **applicant**) otherwise responsible for the payment of a fee required in connection with an appeal or an intended appeal may apply to the Registrar for a waiver of the fee.
- (2) The Registrar may waive the fee payable by the applicant if satisfied,—
  - (a) on the basis of one of the criteria specified in subclause (3), that the applicant is unable to pay the fee; or
  - (b) that the appeal,—
    - (i) on the basis of one of the criteria specified in subclause (4), concerns a matter of genuine public interest; and
    - (ii) is unlikely to be commenced or continued unless the fee is waived.
- (3) For the purposes of these regulations, an applicant is unable to pay the fee sought to be waived if—
  - (a) the applicant has been granted legal aid in respect of the matter for which the fee is payable; or
  - (b) the applicant has not been granted legal aid in respect of the matter for which the fee is payable and the applicant—
    - (i) is dependent for the payment of his or her living expenses on a benefit of a kind specified in any of paragraphs (a) to (e), (h), and (j) of the definition of income-tested benefit in section 3(1) of the Social Security Act 1964; or
    - (ii) is wholly dependent for the payment of his or her living expenses on New Zealand superannuation under the New Zealand Superannuation and Retirement Income Act 2001 or a veteran's pension under the War Pensions Act 1954; or
    - (iii) would otherwise suffer undue financial hardship if he or she paid the fee.

- (4) For the purposes of these regulations, an appeal that concerns a matter of genuine public interest is—
- (a) an appeal that has been or is intended to be commenced to determine a question of law that is of significant interest to the public or to a substantial section of the public; or
  - (b) an appeal that—
    - (i) raises issues of significant interest to the public or to a substantial section of the public; and
    - (ii) is against a judgment, decree, or order given or made in a proceeding commenced by an organisation that, by its governing enactment, constitution, or rules, is expressly or by necessary implication required to promote matters in the public interest.
- (5) An application under subclause (1) must be made in a form approved for the purpose by the Secretary for Justice unless, in a particular case, the Registrar considers that an application in that form is not necessary.

[11] Dealing first with financial hardship, under reg 5(2)(a), the Registrar may waive the fee if satisfied that one of the criteria in reg 5(3) applies. The first of the identified criteria is that the applicant is receiving legal aid. According to his application form, Mr Guy is not in receipt of legal aid and has not applied for it. Of the alternatives identified in the second criterion, only that in reg 5(3)(b)(iii) (undue financial hardship) is relevant.

[12] Mr Guy's application for a waiver provides little in the way of verified information about his financial circumstances. He appears to take the position that he has answered the questions and that is all that is required of him. However, his answers raise a number of questions. For example, he says that he has no assets over \$5,000 and that the Official Assignee has an interest in his estate but does not say what comprises his "estate"; he says that he has debts to family and friends, but again gives no detail of how much is owed and to whom it is owed; he says his wife and her family meet the shortfall in his weekly expenses but does not indicate how they are able to do that; he claims that his family cannot assist him to pay the fee but does not give any supporting detail of his family's financial circumstances.

[13] Moreover, in his judgment, Stevens J noted that Mr Guy had supplied a statement of affairs in which two assets were identified: a residential property with a

GV<sup>5</sup> of \$800,000 and a 2001 Audi A1 vehicle with a value of \$5,000.<sup>6</sup> The property was owned by the Cleveland Trust and the Audi by the Cleveland Trust No 2. Mr Guy was listed as a trustee of the Cleveland Trust. Stevens J said that Mr Guy had failed to address the implications of these assets properly, in particular whether he was a beneficiary under either trust. In addition, Stevens J noted that Mr Guy's wife was a shareholder or director of several companies and that Cleveland Trust No 2 and Cleveland Trust No 3 were also listed as shareholders. Again, Mr Guy had provided no details of any of this. The information is relevant because Mr Guy may well have access to finance from these various sources.

[14] Mr Guy's position appears to be that he has provided answers to the questions in the prescribed form and so is entitled to a fee waiver. However, under reg 5(2) the Registrar may waive the fee only if he is satisfied that Mr Guy would suffer undue financial hardship if he was required to pay it. I must apply the same test on review. The important point is that I must be *satisfied* that Mr Guy falls within reg 5(3)(b)(iii). Mr Guy carries the burden of satisfying me. The information he has provided in support of his application falls far short of doing that.

### **Decision**

[15] The application for review of the Registrar's decision declining to waive the payment of the filing fee is dismissed.

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<sup>5</sup> Government valuation.

<sup>6</sup> *Guy (CA)*, above n 4, at [13].